

TOWN OF BRAINTREE

IN COUNCIL

ORDER NO: 09 048

DATE: February 2, 2009

ORDERED: COUNCILOR BOWES

TITLE 3

CHAPTER 3-120

RESPONSIBLE EMPLOYER ORDINANCE

The Committee of Ordinance and Rules has submitted to the Braintree Town Council the Municipal Code for the Town of Braintree, Massachusetts.

Be it ordained by the Town Council of the Town of Braintree the following Ordinance on "Responsible Employer"

SECTION 3.120.010: Applicability

This Ordinance shall apply to all public building and public works projects in excess of \$250,000 awarded by Town departments, excluding the Electric Light Department and the Tri-Town Board of Water Commissioners. The provisions of this Ordinance shall not apply to an emergency procurement where the public health and safety are deemed to be at risk by the contract awarding authority.

SECTION 3.120.020: Requirements from Bidders

All bidders under bids submitted for projects subject to General Laws Chapter 149, Section 44A (2) and General Laws Chapter 30, Section 39M, shall, at the time said bid is submitted, and all subcontractors under such bids shall, at the time such subcontractor is selected for the project, verify under oath and in writing that they comply with the following conditions for bidding and, for the duration of the project, each bidder and subcontractor shall verify under oath and in writing on a weekly basis that they are in compliance with the following obligations:

1. In a manner that is consistent with applicable law and regulations, the bidder and all subcontractors under the bidder shall employ local workers when qualified local workers are available for work. For the purposes of this Ordinance, "local workers" shall mean the Town of Braintree and its contiguous communities.

2. The bidder and all subcontractors under the bidder must comply with the obligations established under General Laws Chapter 149 to pay the appropriate lawful prevailing wage rates to their employees.
3. The bidder, at the time of submitting his bid, and all subcontractors, prior to the time the subcontractor is selected for the project, must participate in a bona fide apprentice training program as defined by General Laws Chapter 23, Sections 11H and 11I for each apprenticeable trade or occupation represented in their workforce that is approved by the Division of Apprentice Training of the Department of Labor and Workforce Development and must register all apprentices with the Division and abide by the apprentice to journeyman ratio for each trade prescribed therein in the performance of any work on the project.
4. The bidder, at the time of submitting his bid, and all subcontractors, prior to the time the subcontractor is selected for the project, must furnish, at their expense, hospitalization and medical benefits and/or coverage for all individuals employed on the project in an amount that is at least equivalent to the hospitalization and medical benefits provided by the health and welfare plans in the applicable crafts recognized by General Laws Chapter 149, Section 26 in establishing minimum wage rates for all individuals employed on the project.
5. The bidder and all subcontractors under the bidder must maintain appropriate industrial accident insurance coverage for all of their employees on the project in accordance with General Laws Chapter 152.
6. The bidder and all subcontractors under the bidder must properly classify employees as employees rather than independent contractors and treat them accordingly for purposes of workers' compensation insurance coverage, employment taxes, social security taxes and income tax withholding, per General Laws Chapter 149, Section 148B.
7. The bidder, at the time of submitting his bid, and all subcontractors, prior to the time that they are selected for the project, must certify that all employees to be employed at the worksite will have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least ten (10) hours in duration at the time the employee begins work and who shall furnish documentation of successful completion.

8. A bid submitted by any general bidder that does not comply with any of the foregoing conditions for bidding will be grounds for rejection of the bid, and the Invitation for Bids for such projects shall clearly state this requirement. No general bidder shall select a subcontractor for work outside the scope of General Laws Chapter 149, Section 44F that does not comply with the foregoing conditions.
9. All bidders and subcontractors under the bidder who are awarded or who otherwise obtain contracts on projects subject to General Laws Chapter 149, Section 44A(2) or Chapter 30, Section 39M shall comply with any and all of the obligations set forth in this Ordinance for the entire duration of their work on the project, and an officer of each bidder or subcontractor shall certify under oath and in writing on a weekly basis to the Awarding Authority that they are in compliance with such obligations, and it shall be the responsibility of the Awarding Authority to ensure compliance with this Ordinance.

SECTION 3.120.030: Contract Requirements and Penalties for Non-Compliance

- A. Any contract awarded pursuant to this Ordinance shall contain the following provisions: Any bidder or subcontractor who fails to comply with any one of obligations under this Ordinance for any period of time, shall be, at the sole discretion of the Mayor, subject to one or more of the following sanctions: (1) cessation of work on the project until compliance is obtained; (2) permanent removal from any further work on the project; (3) withholding of payment due under any contract or subcontract until compliance is obtained; and (4) liquidated damages to be paid to the Town in the amount of five percent (5%) of the dollar value of the contract held by the non-compliant contractor or subcontractor.
- B. Any contractor or subcontractor that has been determined by the Town of Braintree or by any court or agency to have violated any of the obligations set forth in this Ordinance may be barred from performing any work on any future projects for six months from the date of such determination of the first violation, three years from the date of such determination for a second violation and permanently for a third violation.

SECTION 3.120.040: Compliance Officer

The Department Director under whose recommendation and supervision a contract subject to this Ordinance is awarded shall be the Town's agent responsible for ensuring compliance with and enforcement of this Ordinance.

SECTION 3.120.050: Waiver

The provisions of this Ordinance may be waived by the Mayor, when such waiver is determined to be in the best interests of the Town.


SECTION 3.120.060: Severability

If any provision of this Ordinance or the application of such provision to any person or circumstances shall be enjoined or held to be invalid, the remaining provisions of this Ordinance, or the application of such provisions to persons or circumstances, other than that which is enjoined or held invalid shall be not affected thereby.

YEAS: Bowes, Clifford, DeNapoli, Dingee, Joyce, Kokoros, Mullaney, Randolph, Ryan

NAYS: Bowes, Clifford, DeNapoli, Dingee, Joyce, Kokoros, Mullaney, Randolph, Ryan

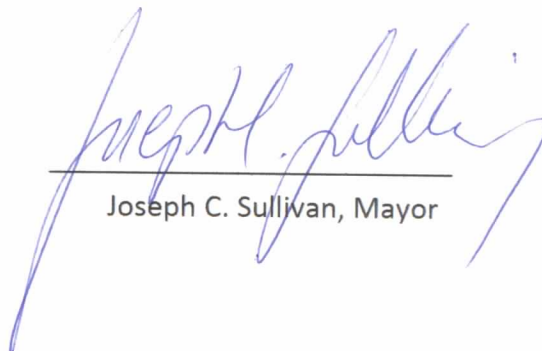
Passed in Council: December 1, 2009
Presented to Mayor: December 3, 2009
A True Copy, Attest:



Joseph F. Powers, Town Clerk



Date Approved



Joseph C. Sullivan, Mayor